IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

MFA.No. 1217 of 2001(A)

OPMV.5564/1995 MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA DATED 06/07/2001.

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APPELLANT/3RD RESPONDENT:

UNITED INDIA INSURANCE CO. LTD.,
BRANCH OFICE, KALLINGAL BUILDING,
IIIRD FLOOR, MAIN ROAD, VADAKARA,
REPRESENTED BY ASSISTANT MANAGER,
MTPC OFFICE, VETTUKATTIL BUILDINGS,
M.G. ROAD, ERNAKULAM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL.

RESPONDENTS/CLAIMANTS & RESPONDENTS 1 & 2:
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1. **O.N. SULOCHANA, DO. NARAYANAN,**
   MUTTIANIKKAL THADATHIL HOUSE,
   AYYANKUNNU VILLAGE & DESOM,
   (KOOTTUPUZHA), THALASSERY TALUK,
   KACHERIKADAVU.P.O., KANNUR DISTRICT,
   (WIFE OF DECEASED M.K. MOHANAN).

2. **MANEESH, S/O. LATE M.K. MOHANAN,**
   MINOR, AGED 11 YEARS,
   MUTTIANIKKAL THADATHIL HOUSE,
   AYYANKUNNU VILLAGE & DESOM,
   (KOOTTUPUZHA) THALASSERY TALUK,
   KACHERIKADAVU.P.O.,
   KANNUR DISTRICT.

prv.

M.F.A. NO. 1217/2001:

**3. MANJUSHA, D/O. OF LATE M.K. MOHANAN,
MINOR, AGED 9 YEARS,
MUTTIANIKKAL THADATHL HOUSE,
AYYANKUNNU VILLAGE & DESOM,
(KOOTTUPUZHA) THALASSERY TALUK,
KACHERIKADAVU.P.O., KANNUR DISTRICT.**

(RESPONDENTS 2 & 3 ARE REPRESENTED BY THEIR NEXT FRIEND AND NATURAL GUARDIAN, MOTHER O.N. SULOCHANA, 1ST RESPONDENT HEREIN)

**4. GOMATHY, W/O. KUMARAN,
MUTTIANIKKAL THADATHIL HOUSE,
AYYANIKUNNU VILLAGE & DESOM,
(KOOTTUPUZHA), THALASSERY TALUK,
KACHERIKADAVU.P.O., KANNUR DISTRICT,
(MOTHER OF THE DECEASED).**

**5. M.N. KUMARAN, S/O. NARAYANAN,
MUTTIANIKKAL THADATHIL HOUSE,
AYYANKUNNU VILLAGE & DESOM,
(KOOTTUPUZHA), THALASSERI TALUK,
KANNUR DUSTRICT.
(FATHER OF THE DECEASED).**

**6. K.K. YOUSUF, S/O. USMAN,
K.K. HOUSE, P.O. AZHIYUR,
VIA. VADAKARA, KOZHIKODE DISTRICT,
(OWNER OF BUS KRD 6966)**

**7. K.K. GOPI, S/O. KARAPPAN,
KARATTUPARAMBIL HOUSE,
MADAKKATHARA VILLAGE,
CHEREKKANKODE DESOM, VELLANIKKAL TALUK,
MANNUTHI POLICE STATION, TRICHUR DISTRICT,
(DRIVER OF BUS KRD 6966, D/L. NO. 877,
BADGE NO. 620/89 VALID UPTO 09/12/2005).**

**BY ADV. SRI.K.RAMAKUMAR,
SRI.T.RAMPRASAD UNNI.**

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

ORDER ON C.M.P. NOS. 8346/2001 & 5560/2002 IN M.F.A. NO. 1217/2001

DISMISSED

SD/- J.B.KOSHY, JUDGE.

04/09/2007. **SD/- K. HEMA, JUDGE.**

//TRUE COPY//

prv.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1217 OF 2001

Dated 4th September, 2007

JUDGMENT

Koshy,J.

A youngster aged 34 died in a motor accident on 17.11.1994. While he was riding his own motor cycle, a bus insured by the appellant insurance company hit the motor cycle and as a result of which he died. His legal representatives, wife, two children and parents, filed an application for compensation attributing negligence on the driver of the bus insured by the appellant insurance company and the amount claimed was Rs.10,00,000/=. Only a total compensation of Rs.5,38,188/= was awarded as compensation. Appellant insurance company only questions the quantum of compensation. Therefore, we are considering only the question of quantum of compensation in this appeal.

2. The deceased was employed as a medical representative and he was maintaining a family consisting of his wife, two children and parents. he was the sole bread winner of the family. Being a medical representative, apart from his fixed basic pay and D.A., he was also getting incentive depending upon the sales. The Tribunal on the basis of evidence (Ext.A8 wage register and Ext.A9 salary certificate) found that actual monthly income of the deceased at the time of accident was Rs.3,958.22. One third was deducted for finding out the loss of dependency and Tribunal fixed monthly loss of dependency at

Rs.2,639/=. Taking guidance from the second schedule 16 was taken as the multiplier and dependency compensation was calculated at Rs.5,06,688/=. (See **Smt. Supe Dei and others** v. **M/s.National Insurance Company Ltd. and another** (JT 2002 (Suppl. 1) SC 451)) It is the contention of the appellant insurance company that the incentive received as commission, D.A. Etc. should be deleted. D.A. is part of wages. The main income of a medical representative is the incentive he gets from the sales. The Tribunal has gone through the salary certificate, wage register etc. and found that his average monthly income was more than Rs.3,958/=. It is the contention of the claimants that future prospects also ought to have been taken into account. The deceased was having his own motor cycle and he was maintaining his family very decently from his income and according to the claimants, the entire amount should have been granted. Considering the age of the deceased, the income he was getting etc. we are of the opinion that only just and reasonable compensation was awarded and no interference is required at the instance of the appellant insurance company.

The appeal is dismissed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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